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10/559,860	12/06/2005	Ali Nifuroshan	101663.0001US2	7437
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EXAMINER				
NGUYEN, SON T				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/559,860

**Applicant(s)**

NILFUROSHAN, ALI

**Examiner**

Son T. Nguyen

**Art Unit**

3643

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 61-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 61-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### DETAILED ACTION

1. The amendment filed on 1/29/08 contains non-compliance errors because Applicant failed to underline the new limitation as amended in claim 61. However, instead of sending out a non-compliance just for claim 61, the Examiner is treating the claim as filed. It is noted that for future reference, Applicant is advised to underline new limitation added to the claims.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 61 & 68** are rejected under 35 U.S.C. 102(b) as being anticipated by Taudauchi et al. (JP410113088A).

For claim 61, Taudauchi et al. a temperature altering system, comprising: a blanket 1 sized and dimensioned to lie across a torso of a horse (the claimed limitation is functional recitation, to which the blanket of Taudauchi et al. is structurally capable of being used to lie across a torso area of a horse if one wishes to do so); first and second pockets 22 disposed on an underside of the blanket, each of which has a cavity that includes a removable temperature altering device 21, and each of which is freely positionable about the blanket using hook and loop fasteners 32; and the blanket having a flap 152,153 sized and dimensioned to secure the blanket to the horse.

For claim 68, Tadauchi et al. further teach wherein the pockets mate with a bottom side of the blanket. See fig. 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 61,63,65,67** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. (5537954) in view of Tadauchi et al. (as above).

For claim 61, Beeghly et al. teaches a temperature altering system, comprising: a blanket 10,12 sized and dimensioned to lie across a torso of a horse of a horse; first and second pockets 14, each of which has a cavity that includes a removable temperature altering device 40; and the blanket having a flap (col. 5, lines 23-27) sized and dimensioned to secure the blanket to the horse. Note that Beeghly et al. teaches in col. 5, lines 20-25, that the blanket can be sized and dimensioned for different animals. Thus, although shown for a dog, the blanket can be sized accordingly to other animals such as a horse. Also, if the horse is small such as a pony, it will be able to fit the blanket as shown for a dog. However, Beeghly et al. are silent about the pockets being disposed on an underside of the blanket, and the pockets being freely positionable about the blanket using hook and loop fasteners.

As mentioned in the above, Tadauchi et al. teach in the same field of endeavor of animal cover as that of Beeghly et al., in which Tadauchi et al. employ

attachable/detachable pockets 22 (by using hook and loop 32) containing removable temperature altering device 21 that are placed on an underside of the blanket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pockets of Beeghly et al. be attachable/detachable by using hook and loop material as taught by Tadauchi et al. in order to allow a user to removably place the pockets with the temperature altering device in various area of the animal's body as desired. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007). In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the pockets of Beeghly on an underside of the blanket as taught by Tadauchi et al. in order to hide the pockets inside the blanket for a more aesthetically pleasing appearance and to prevent objects from getting caught on the pockets if the pockets were to be on the exterior side. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 63, Beeghly et al. as modified by Tadauchi et al. (emphasis on Beeghly et al.) further teaches wherein the first pocket has a flap 32 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

For claim 65, Beeghly et al. as modified by Tadauchi et al. (emphasis on Beeghly et al.) further teaches wherein the first pocket has a button 36 disposed to assist in keeping a corresponding one of the temperature altering devices within a cavity of the first pocket.

For claim 67, Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly et al.) further teaches wherein the pockets mate with a top side of the blanket. See fig. 1, self explanatory.

6. **Claims 62,66,69** are rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as modified by Taudauchi et al. as applied to claim 61 above, and further in view of Newman (5271211).

For claim 62, Beeghly et al. as modified by Taudauchi et al. are silent wherein the blanket has an underside that includes a wicking material.

Newman teaches in the same field of endeavor of animal cover as that of Beeghly et al. and Taudauchi et al., in which Newman's cover 24 includes a wicking material on an underside of the cover (col. 6, lines 25-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a wicking material as taught by Newman on the underside of the blanket of Beeghly et al. as modified by Taudauchi et al. in order to promote evaporation of perspiration away from the body of the animal (col. 6, lines 25-34 of Newman). KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 66, in addition to the above, Newman also teaches a reflective material on the top panel 100 of the cover 24 (col. 6, lines 25-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a reflective material as taught by Newman on a side adjacent the blanket of Beeghly et al. as modified by Taudauchi et al. in order to promote heat or sun reflectance (col. 6, lines

35-36 of Newman). KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 69, in addition to the above, Newman also teaches wherein a flap 124,120,122 is positioned to secure the blanket at a rear portion of the horse. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a flap as taught by Newman in the rear portion of the blanket of Beeghly et al. as modified by Taudauchi et al. in order to further secure the blanket onto the animal. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

7. **Claim 64** is rejected under 35 U.S.C. 103(a) as being unpatentable over Beeghly et al. as modified by Taudauchi et al. as applied to claim 61 above, and further in view of Fazio (6443101).

Beeghly et al. as modified by Taudauchi et al. (emphasis on Beeghly) teach button snap 36 as the preferred fastener for the opening in the pockets but not zipper as the preferred fastener.

Fazio teaches in the same field of endeavor of animal cover as that of Beeghly et al. and Taudauchi et al., in which Fazio employ a pocket 80 with zipper to close the opening 82 of the pocket. It would have been an obvious substitution of functional equivalent to substitute the button snap of Beeghly et al. as modified by Taudauchi et al. with a zipper as taught by Fazio, since a simple substitution of one known element for another would obtain predictable results. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

***Response to Arguments***

8. Applicant's arguments filed 1/29/08 have been fully considered but they are not persuasive.

**Applicant argued that the rejection has been obviated by amending claim 1 to recite "a blanket sized and dimensioned to lie across the torso of a horse." Tadauchi fails to teach a blanket sized and dimensioned to lie across the torso of a horse, and as such fails to anticipate independent claim 61.**

The phrase "sized and dimensioned" is functional recitation to which the structure of the blanket of Tadauchi can be laid across a torso if one wishes to do so. Note that the claimed language does not further define the torso so one can interpret the torso to mean a portion of the back, side, etc. of the horse and not necessary the whole back portion from front end to back end of the horse. For example, if the horse's back area is sore, one can take the blanket of Tadauchi and place it on the sore back area, hence, the blanket is sized and dimensioned to lie across the back area, which is a part of the torso.

**Applicant argued that in this case, the examiner has failed to set forth a proper showing of prima facie obviousness. Instead, the examiner merely stated that since Beeghly teaches an animal sweater having pockets, and Tadauchi teaches a horse harness having freely positionable pockets, that the claimed invention is obvious over the combination of Beeghly and Tadauchi. Without a showing of some teaching, suggestion, or motivation to make the cited**



**combination, the mere conclusory statements of the examiner are insufficient to establish prima facie obviousness.**

Clearly from the rejection above, the Examiner has stated the motivation to combine the references. The two references are in the same field of endeavor of animal cover and Beeghly teaches pockets that are not movable or positionable, while Tadauchi teaches pockets that are movable or positionable, thus, there is no reason why one of ordinary skill in the art analyzing both references would not combine the two for movable or positionable pockets in order to allow a user to removably place the pockets with the temperature altering device in various area of the animal's body as desired. This is clear and simple motivation to combine these two references and the combination does not in any way alter the invention of Beeghly because the pockets are still there to hold cold or hot packs for treating the animal. By having these pockets of Beeghly positionable do not alter Beeghly's invention in any way whatsoever. In addition, positionable pockets for therapy treatment either for human or animals is not a new concept in the art.

**Applicant argued that Beeghly's sweater slips over an animal (as opposed to being draped over an animal) it would be inconvenient at best to have the pockets disposed on an undersurface of the sweater. Access to the pockets would be severely limited, and one of ordinary skill in the art would not have thought to combine the sweater of Beeghly with pockets disposed on an undersurface of the garment.**

An inconvenient to Applicant might not be an inconvenient to another user. As long as the structure is there to perform the intended use, an inconvenient factor is not given patentable weight because it varies with the users' ability. In addition, from col. 5, lines 23-35, of Beeghly, Beeghly states that adjustable straps, elastic members, VELCRO, etc. can be used to fasten the blanket or sweater around the animal and not just a tight slip on sweater as shown and believed by Applicant. Thus, it would not be of an inconvenient to one using the sweater of Beeghly if these fasteners are employed and the pockets are disposed on an undersurface of the sweater because all the user has to do is un-fastened the fasteners and take out or put in the pockets with cold or hot packs to treat the animal where it is sore.

**Applicant argued that there is no indication in Beeghly that the positioning of the pockets is relevant, and therefore no teaching, suggestion, or motivation for one of ordinary skill in the art to use freely positionable pockets.**

The Examiner never stated that Beeghly anticipated in this limitation, however, combining with Tadauchi's teaching of positionable pockets in a 103 rejection does teach this limitation with the motivation to combine as stated in the rejection above.

**Applicant argued that the fact is that when Beeghly's sweater provides its warming function to the back/torso of an animal, there is a lot of area to be covered by the heating pockets. One of ordinary skill in the art would use pockets that are large, and large pockets would tend to only fit properly in predetermined positions. One of ordinary skill in the art would therefore not have contemplated using freely positionable pockets in combination with Beeghly's sweater.**

It appears that Applicant is making a mere allegation without proof or evidence of such teaching from Beeghly. Beeghly never specified in his specification that the pockets have to be large. As a matter of fact, Beeghly stated that the pockets can be of any sizes and shapes depending on the user's choice (see col. 5, lines 27-31 and col. 6, lines 44-50). One of ordinary skill in the art would know to use an appropriate size pocket to accommodate the animal.

**Applicant argued that Tadauchi device cools a horse's head by providing a head harness having freely positionable pockets on the underside of the harness. (Tadauchi Figure 1). Here, the pockets are small and freely positionable about the interior of the harness, presumably in order to: (1) accommodate different sizes and dimensions of horse heads; (2) decrease the weight of the device in an area (the head) where added weight could be troublesome; and (3) accommodate many different muscles in a small area. There is no teaching, suggestion, or motivation to use Tadauchi's freely positionable pockets for thermo-regulation of the torso, where: (1) a single blanket size can accommodate a wide range of horses; (2) the added weight of thermo-pads would be largely irrelevant; and (3) the muscles are spread out over a large area. One of ordinary skill in the art would consider Tadauchi's freely positionable pockets to be inapplicable to the back/torso of a horse.**

Again, Applicant is making a mere allegation without proof or evidence of such teaching from Tadauchi. "Presumably" is exactly the right word to use since the argument is only based upon Applicant's presumption and not what is really taught or

factually stated in Tadauchi. Clearly, one of ordinary skill in the art would consider Tadauchi's freely positionable pockets to the back/torso of a horse because there is no reason why one would do so in order to alleviate soreness in the region of the back that is sore.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3643

/Son T. Nguyen/

Primary Examiner, Art Unit 3643